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09/877,549	06/08/2001	Michael Florence	50588/170	9126

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EXAMINER

SALCE, JASON P

ART UNIT PAPER NUMBER

2623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/877,549	Applicant(s) FLORENCE, MICHAEL	
	Examiner Jason P. Salce	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,9-15,17-19,21-26,28-39,41,42,52,53,55,56,58,59,61 and 79-98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-3,5-7,9-15,17-19,21-26,28-39,41,42,52,53,55,56,58,59,61 and 79-98.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/04/2006 have been fully considered but they are not persuasive.

Applicant has amended independent claims 1, 13 and 26 to state, "*wherein the favorites tables includes a field that signifies a preference for a way in which the channel favorites are displayed*". The examiner notes that this limitation still reads on the prior art of record (Bedard). At Column 4, Lines 49-51 Bedard discloses not only a total viewing unit counter/field 204, but also category and subcategory viewing counters 206. Therefore, Bedard clearly contains a field that signifies a preference (category or subcategory) for a way in which the channel favorites are displayed.

Applicant has amended independent claims 9, 21 and 31 to state, "*wherein the updating is performed if and only if the calculated time difference is larger than a threshold, wherein the threshold is ten seconds*". Applicant argues that because Bedard does not teach the void of time between 10 seconds and 59 seconds, that Bedard cannot teach the claimed limitations. However, the examiner notes that because of the way the claim were written, Bedard still reads on the claims. The examiner notes that the claim says "if and only if the calculated time difference is larger than a threshold, wherein the threshold is ten seconds". Bedard clearly teaches 1 minute, which is larger than ten seconds, which is the threshold Bedard is required to be larger than according to the claim limitations. Therefore, Bedard clearly teaches a threshold larger than ten seconds, by teaching 1, 5 or 10 minutes. The claim limitations

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do not require that the calculated time difference fall within a threshold of 10 to 59 seconds, the claim only requires any time larger than a threshold of 10, which Bedard teaches with a calculated time difference of 1 minute or higher.

Applicant also argues that because independent claims 25, 35 and 61 recite means plus function language that the claims are patentable and the examiner has only shown a functional equivalent and not a structural equivalent. The Applicant's specification, in Figure 7 teaches a set-top box for performing the management of favorite channels. Bedard shows the equivalent structure at Column 3, Lines 6-8 by also teaching a set-top unit for performing the functional equivalent of calculating a time difference and using the time difference to create a list of favorite programs.

Applicant has amended independent claims 36 and 52 to state, "wherein a contiguous period of time watching a program is counted as one time regardless of the length of the period". The examiner notes that Bedard is silent in teaching a cumulative time field as taught by the Applicant, therefore the examiner will provide Candelore to teach a cumulative time field.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-7, 9-15, 17-19, 21-26, 28-34, 61, 80, 83 and 86 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bedard (U.S. Patent No. 5,801,747).

Referring to claim 1, Bedard discloses a method for generating a list of favorites (see Figure 3) in an interactive television system (see Figure 4).

Bedard also discloses receiving a first notification, the first notification indicating a first channel activity (see step 300 in Figure 3 and Column 5, Lines 34-36).

Bedard also discloses receiving a second notification, the second notification indicating a second channel activity (see step 302 in Figure 3 and Column 5, Lines 36-37).

Bedard also discloses calculating a time difference between the first and the second notification (see step 304 in Figure 3 and Column 5, Lines 37-42).

Bedard also discloses updating a channel favorites table based on the calculated time difference (see step 312 in Figure 3 and Column 5, Lines 49-55), wherein the favorites table includes a field that signifies a preference for a way in which the channel favorites are displayed (see Column 4, Lines 49-51 Bedard discloses not only a total viewing unit counter/field 204, but also category and subcategory viewing counters 206. Therefore, Bedard clearly contains a field that signifies a preference (category or subcategory) for a way in which the channel favorites are displayed).

Referring to claim 2, Bedard discloses that the updating includes adding the calculated time difference (the determination of if the time difference between channel changes exceeds a viewing time period at Column 5, Lines 37-42) to a first channel

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cumulative time field in the favorites table (see Figure 2 for a cumulative (total units) field in the favorites table and Column 4, Lines 51-54 for adding viewing units to the total viewing counter 204 field if a viewing unit is determined for a particular category in the channel favorites table).

Referring to claim 3, Bedard discloses updating further includes incrementing a counter in a first channel view frequency field of the favorites table (see field 206 in Figure 2 and Column 4, Lines 49-51 for an individual unit counter 206, which is incremented each time a program category is selected for each channel).

Referring to claim 5, Bedard discloses displaying a list of channels from the channel favorites table (see Figure 5 and Column 7, Lines 39-41).

Referring to claim 6, Bedard discloses that the list of channels is displayed according to the favorites display preference (see again Figure 5 and Column 7, Lines 39-41).

Referring to claim 7, Bedard discloses identifying a viewer of the interactive television system (see Figure 5 for identifying that the current viewer is "XINA").

Referring to claim 9, Bedard discloses a method for generating a list of favorites (see Figure 3) in an interactive television system (see Figure 4).

Bedard also discloses receiving a first notification, the first notification indicating a first channel activity (see step 300 in Figure 3 and Column 5, Lines 34-36).

Bedard also discloses receiving a second notification, the second notification indicating a second channel activity (see step 302 in Figure 3 and Column 5, Lines 36-37).

Bedard also discloses calculating a time difference between the first and the second notification (see step 304 in Figure 3 and Column 5, Lines 37-42).

Bedard also discloses updating a channel favorites table based on the calculated time difference, wherein the updating is performed if and only if the calculated time difference is larger than a threshold, wherein the threshold is ten seconds (see step 312 in Figure 3 and Column 5, Lines 49-55 and Column 3, Line 63 through Column 4, Line 14, which actually teaches that updating is performed if the calculated time difference is larger than about ten seconds (see Column 4, Lines 7-12 for the calculated time different being larger than ten seconds (1, 5, 10 or 15 minute durations)). Further note Applicant argues that because Bedard does not teach the void of time between 10 seconds and 59 seconds, that Bedard cannot teach the claimed limitations. However, the examiner notes that because of the way the claim were written, Bedard still reads on the claims. The examiner notes that the claim says "if and only if the calculated time difference is larger than a threshold, wherein the threshold is ten seconds". Bedard clearly teaches 1 minute, which is larger than ten seconds, which is the threshold Bedard is required to be larger than according to the claim limitations. Therefore, Bedard clearly teaches a threshold larger than ten seconds, by teaching 1, 5

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or 10 minutes. The claim limitations do not require that the calculated time difference fall within a threshold of 10 to 59 seconds, the claim only requires any time larger than a threshold of 10, which Bedard teaches with a calculated time difference of 1 minute or higher.

Referring to claim 10, Bedard discloses that the first and second activities include selecting a first and second channel, respectively (see Column 3, Lines 16-32 for selecting channels through an EPG).

Referring to claim 11, Bedard discloses that the first and second activities include selecting a first and second channel, respectively (see Column 5, Lines 34-38 and Figure 3).

Referring to claim 12, Bedard discloses that the first and second activities include viewing a first and second channel, respectively (see again Column 5, Lines 34-38 and Figure 3).

Referring to claims 13-15 and 17-19, see the rejection of claims 1-3 and 5-7, respectively.

Referring to claims 21-24, see the rejection of claims 9-12, respectively.

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Referring to claims 25, see the rejection of claim 1 and the arguments above for how Bedard meets the equivalence requirements of U.S.C. 112 6th Paragraph.

Referring to claim 26, see the rejection of claim 1.

Referring to claim 28, see the rejection of claims 5-6.

Referring to claim 29, see the rejection of claim 7.

Referring to claim 30, Bedard discloses that the generation engine (the software that creates the EPG based on the favorite program calculations) and the display engine (the television) are capable to filter channel changes based on the calculated time difference (see Figure 3 for the software that calculates favorite channels and stores the results in memory and Figure 5 for the display engine displaying the favorite channels calculated by the algorithm of Figure 3).

Referring to claim 31, see the rejection of claim 9.

Referring to claims 32-34, see the rejection of claims 10-12, respectively.

Referring to claim 61, see the rejection of claim 1 and the arguments above for how Bedard meets the equivalence requirements of U.S.C. 112 6th Paragraph.

Referring to claims 80, 83 and 86, Bedard discloses ordering the favorite channels in an order based on a number of times of each favorite channel has been

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viewed (see Column 7, Lines 23-27 for ordering the favorite channels at the top of a channel list and further note each time a channel is selected for more than a threshold (1 minute) a counter is incremented and represents that the channel has been viewed and this data is used to create the channel favorite table, therefore the list is ordered at Column 7, Lines 23-27 according to the a number of times of each favorite channel has been viewed). In other words, if I view channel 7 ten times, and the counter is incremented 6 times for watching channel 7 more than 1 minute, 6 times is still a number of times of each favorite channel has been viewed).

3. Claims 36-39, 41-42, 52-53, 55-56, 58-59 and 90-98 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Candelore et al. (U.S. Application Publication 2002/0104081).

Referring to claim 36, Candelore discloses an apparatus (see apparatus 400 in Figure 4) for creating favorite channels in an interactive television system (see favorite list 408 in Figure 4).

Candelore further discloses a processor (see CPU 29 in Figure 4) and a generation engine executable by the processor (see stat table 406 executed by CPU 29) and capable to generate a list including at least one favorite channel based upon a selection of a channel (see Figure 5 for storing the statistics and creating a favorites table from the statistics).

Candelore further discloses a display engine executable by the processor (see Demultiplexer 24 and MPEG Decoder 25 in Figure 2) and capable to enable the display

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of the list (see Paragraphs 25 and 28), wherein the list includes a plurality of channels listed based upon the number of times the respective channels have been watched (see Paragraph 0030), wherein a contiguous period of time watching a program is counted as one time regardless of the length of the period (see Paragraph 0034).

Referring to claim 37, Candelore discloses a filter engine executable by the processor and capable to select a channel to be included in the list (see Paragraph 0047 for replacing channel no longer belong in the favorite list with more relevant favorite channels).

Referring to claim 38, Candelore discloses that the list includes a plurality of channels listed based upon an associated numeral of a channel (see Paragraph 0003 for the various types of data that can be displayed in the EPG while displaying a list of programs, which includes a channel number).

Referring to claim 39, Candelore discloses that the list includes a plurality of channels listed based upon a viewing time of a channel (see Paragraph 0034).

Referring to claim 41, Candelore discloses that the list is associated with a first identification (see Paragraph 0030 for the list being associated with the number of times a channel has been accessed).

Referring to claim 42, Candelore discloses that the generation engine is capable to generate a second list associated with a second identification (see Paragraph 0030 for changing the item that is used to create the favorite list, therefore creating multiple (second) types of list).

Referring to claims 52-53, 55-56 and 58-59, see the rejection of claims 36-39 and 41-42, respectively.

Referring to claim 90, Candelore discloses generating a list of channel favorites in an interactive television system (see Paragraph 0028).

Candelore also discloses receiving a first notification, the first notification indicating a first channel activity and receiving a second notification, the second notification indicating a second channel activity and calculating a time difference between the first and second notifications (see Paragraphs 0030-0032 for tracking channel changes and note that since a time is determined and added to the cumulative time field in Table 1, if a user selects channel 5 at 5pm and then channel 7 at 5:30pm, the system must subtract these times in order to acquire the 30 minutes time window that must be added to said cumulative time field).

Candelore also discloses updating a channel favorites table (see Paragraph 0032 for updating the stats table 406 in Figure 4), which comprises a field indicative of cumulative time a channel has been watched (see Table 1) and which further comprises a field indicative of the number of times said channel has been watched (see

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Paragraphs 0030 and 0045), by adding the calculated time difference to a first channel cumulative time field in the favorites table (see Paragraph 0034) and by incrementing a counter representing the number of times said channel has been watched in the favorites table (see table 5 and Paragraph 0045).

Referring to claim 91, Candelore discloses displaying a list of channels from the channel favorites table (see Paragraph 0047).

Referring to claim 92, Candelore discloses that the list of channels is displayed in an order based on said cumulative time (see Paragraphs 0046-0047).

Referring to claim 93, Candelore discloses that the list of channels is displayed in an order based on said counter (see Paragraphs 0045-0048).

Referring to claim 94, Candelore discloses that the first and second notifications are electronic program guide notifications received from an electronic program guide (see Figure 1 and Paragraphs 0003 and 0020).

Referring to claim 95, Candelore discloses that the first and second activities include selecting a first and second channel, respectively (see the rejection of claim 90 for selecting channels in order to create a favorites table).

Referring to claim 96, see the rejection claim 95.

Referring to claims 97-98, see the rejection of claim 90.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (U.S. Patent No. 5,801,747) in view of Alexander et al. (U.S. Patent No. 6,177,931).

Referring to claim 35, see the rejection of claim 1 (above) for Bedard teaching the favorite program channel table accumulation, calculation and display method and the arguments above for how Bedard meets the equivalence requirements of U.S.C. 112 6th Paragraph.

Bedard also teaches a "push" model for accessing an external source of information (see Column 8, Lines 51-63).

However, Bedard is silent as to the creation of the favorite channel list being performed at a server.

Alexander discloses that the processing can be performed at either locally or remotely (at a television headend) at Column 28, Line 10 through Column 30, Line 58.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the local (set-top box) calculation of the favorite channel list, as taught by Bedard, to be performed at a server (television headend), as taught by Alexander, for the purpose of providing improved features to the EPG display and navigation (see Column 2, Line 8 of Alexander).

5. Claims 79, 82 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (U.S. Patent No. 5,801,747) in view of Wugofski et al. (U.S. Patent No. 7,152,236).

Referring to claim 79, Bedard discloses all of the limitations in claim 1, but is silent as to ordering the favorite channel list in a numerical order by channel number.

Wugofski discloses organizing a favorite channel list in a numerical order by channel number (Column 5, Lines 56-58).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the favorite channel list, as taught by Bedard, using the numerically ordered favorite channel list, as taught by Wugofski, for the purpose of determining a particular graphical user interface for the channel list when displayed in the electronic program guide (see Column 5, Lines 31-33 of Wugofski), which would allow a user to more easily locate a channel, because by providing a more organized channel list, the user would already know that the highest channel number is at the top and the lowest channel number is at the bottom.

Referring to claims 82 and 85, see the rejection of claim 79.

6. Claims 81, 84 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (U.S. Patent No. 5,801,747) in view of Candelore et al. (U.S. Patent Application Publication 2002/0104081).

Referring to claim 81, Bedard discloses all of the limitations of claim 1, but is silent as to the favorite channel list being ordered based on a cumulative viewing time per channel.

Candelore teaches organizing a favorite channel list order according to a cumulative viewing time per channel (see Paragraphs 0034, 0046-0047).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the favorite channel list, as taught by Bedard, using the cumulative time ordered favorite channel list, as taught by Candelore, for the purpose of automatically creating a favorites list based on maintained relative statistics and by using these relative statistics, the ranking of favorites can be maintained efficiently within limited system resources (see Paragraph 0006 of Candelore).

Referring to claims 84-87, see the rejection of claim 81.

7. Claims 88-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al. (U.S. Patent Application Publication 2002/0104081) in view of Bedard (U.S. Patent No. 5,801,747).

Referring to claim 88, Candelore discloses all of the limitations of claim 36, but is silent as to teaching that a channel selection is ignored if the channel was selected for a period of time sufficiently small to be indicative of channel surfing.

Bedard teaches that a channel selection is ignored if the channel was selected for a period of time sufficiently small to be indicative of channel surfing (see Column 4, Lines 5-14).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the tracking of channels viewed, as taught by Candelore, using the channel surfing tracking functionality, as taught by Bedard, for the purpose of allowing the viewer profile to focus upon a viewer's true interests and prevent numerous short unrepresentative viewing durations from skewing the data concerning the viewer's true preferences (see Column 4, Lines 1-5 of Bedard).

Referring to claim 89, see the rejection of claim 88.

Conclusion

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason P Salce
Primary Examiner
Art Unit 2623

February 8, 2007

JASON SALCE
PRIMARY PATENT EXAMINER

